

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

- - - In the Matter of the Application of - -)
)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding To)
Investigate Implementing a)
Decoupling Mechanism for Hawaiian)
Electric Company, Inc., Hawaii)
Electric Light Company, Inc.,)
and Maui Electric Company, Limited)
_____)

PUC Docket 2008-0274

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PUBLIC UTILITIES
COMMISSION

LIFE OF THE LAND'S
MOTION TO INTERVENE
&
CERTIFICATE OF SERVICE

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November 3, 2008

Aloha Commissioners,

Introduction:

On October 24, 2008 the Public Utilities Commission ("Commission") filed an ORDER INITIATING INVESTIGATION re Decoupling:

"On October 20, 2008, the Governor of the State of Hawaii, the State of Hawaii Department of Business, Economic Development and Tourism, the State of Hawaii Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs ("Consumer Advocate"), and the HECO Companies entered into a comprehensive agreement designed to move the State away from its dependence on imported fossil fuels for electricity and ground transportation, and toward "indigenously produced renewable energy and an ethic of energy efficiency." A product of the Hawaii Clean Energy Initiative, the Agreement is a commitment on the part of the State and the HECO Companies to accelerate the addition of new, clean resources to all islands; to transition the HECO Companies away from a model that encourages increased electricity usage; and to provide measures to assist consumers in reducing their electricity bills. Included in that Agreement is a commitment by the HECO Companies to modify their traditional rate-making model by implementing a decoupling mechanism. Generally, decoupling is a regulatory tool designed to separate a utility's revenue from changes in energy sales. Decoupling, as asserted by its proponents, has the benefits of encourage the substitution of renewable resources, distributed generation and energy efficiency for the utility's fossil fuel production (by reducing a utility's disincentive to promote these type of resources and programs), while simultaneously protecting a utility's financial health from erosion as these types of programs go into effect." (Commission Order, pages 2-3)

The term "decoupling" generally refers to a rate structure that deemphasizes the connection between utility revenue recovery and kWh sales volume, thereby potentially removing the structural disincentive embedded in a volume-based rate structure for energy efficiency measures that reduce sales. Under traditional rate structures, utilities recover fixed costs and variable costs through kilowatthour (kWh) sales.

If a utility achieves greater sales than projected, it recovers more than its fixed costs.

Thus, traditional rate mechanisms creates a disincentive for the utility to support energy efficiency efforts that will reduce kWh sales. However, if a rate structure appropriately decouples revenues from kWh sales, it can eliminate this disincentive to encourage conservation and allow for recovery of fixed costs even if sales fall below projections. Decoupling provides certainty to the utility of fixed cost recovery.

Hawaii PUC: "DoD, the Consumer Advocate, and HREA oppose decoupling. DoD opposes decoupling because (1) decoupling diminishes the utility's motivation to accommodate customer needs by 'shift[ing] the risk of changes in economic conditions, variations in weather patterns, and all other factors that affect sales away from the electric utility to the customer," such that "reduced sales [do] not impact the utility's bottom line, " and (2) decoupling experience in the past has been 'limited and unfavorable . DoD states that if the objective of decoupling is to 'give the utility additional motivation to pursue DSM," then the "preferable alternative [is to] utiliz[e] a third party to administer and implement the DSM measures, thereby creating direct competition between [E]nergy [E]fficiency programs delivered through the third party and the efficient production and delivery of electricity on the part of the utility. The HECO Companies and the Consumer Advocate recommend that the commission defer the decision on decoupling." (Commission Decision and Order 23258, Docket No. 05-0069 hawaii.gov/budget/puc/dockets/05-0069_dno23258_2007-02-13.pdf (page 53)

HECO: "Decoupling is complex. Some of the issues involved in decoupling include how to recouple and whether to decouple all sales or sales only from selected customer classes. Additional issues include whether demand should be decoupled as well as energy, and the determination of the effect on ratepayers of the re-coupling mechanism. For example, depending on which customer classes are decoupled and which re-coupling index is used, the periodic reconciliation process could result in some customer bills increasing and other bills decreasing." (HECO Opening Brief, Docket 05-0069, page 220, lines 12-17.
<http://hawaii.gov/budget/puc/dockets/energy.htm#0069>)

The National Association of Regulatory Utility Commissioners: "Decoupling does not change the traditional rate case procedure but, in its simplest form, adds an

automatic "true-up" mechanism that adjusts rates between rate cases based upon the over- or under-recovery of target revenues. As in the traditional rate case, a rate is set by determining the revenue requirement and dividing it by expected sales. In decoupling's simplest form, prices are adjusted to maintain a constant target revenue; however, in most applications of decoupling the target revenue is adjusted for changes in the customer base so that the revenue target varies with the number of customers, but not on the basis of how much electricity or gas the utility sells. ... While it can remove disincentives for utilities to promote efficiency, decoupling is not designed to create an incentive for energy efficiency. ... Whether decoupling will in itself result in increased efficiency is still the subject of debate. " (Decoupling For Electric & Gas Utilities: Frequently Asked Questions (FAQ) The National Association of Regulatory Utility Commissioners (NARUC) Grants & Research Department (September 2007) www.naruc.org)

California PUC: "Decoupling of revenues/sales for non-fuel costs began in 1978 for natural gas; 1982 for electric: "...the adoption of an ERAM [Electric Revenue Adjustment Mechanism] ... will eliminate any disincentives PG&E may have to promote vigorous conservation measures and also be fair to ratepayers in assuring that PG&E receives no more or no less than the level of revenues intended to be earned.'" (California Public Utilities Commission Decision 93887, 12/30/1981)

Oregon PUC: "[T]he Commission first considered decoupling over ten years ago as a means to make regulatory policy more compatible with least-cost planning. Several states, including California, New York, Washington, and Maine adopted various decoupling mechanisms. This Commission joined that list of states by fully decoupling PGE's revenues and sales in the mid-1990s and adopting a revenue cap mechanism for PacifiCorp's distribution revenues in 1998.

The popularity of decoupling mechanisms, however, has declined in recent years for a variety of reasons. Uncertainties related to the restructuring of the electric industry caused California to eliminate revenue decoupling in 1998. Concerns that decoupling inappropriately shifted business risk to ratepayers led Maine and Washington to eliminate similar mechanisms. Washington also questioned the effectiveness of decoupling, finding no evidence that its mechanism provided a clear incentive for

utilities to manage its acquisition of supply and demand-side resources at least cost. Staff has raised similar concerns with regard to the decoupling mechanisms previously adopted in Oregon. Staff notes that PGE's and PacifiCorp's conservation activities actually decreased significantly while those companies were subject to decoupling mechanisms.

In addition, the regulatory landscape has changed dramatically since this Commission first embraced decoupling a decade ago. All six regulated energy utilities now have some mechanism in place to protect themselves from revenue volatility due to fluctuating power prices. This Commission has also adopted a number of regulatory mechanisms to provide incentives for utility DSM acquisition. These include investment cost recovery, lost margin recovery, incentive mechanisms such as SAVE, conservation bonding, and various accounting mechanisms to reduce risk associated with the amounts of DSM on utilities' accounting records. While some jurisdictions are revisiting new forms of revenue cap mechanisms, some question the continued need for decoupling." (Public Utilities Commission of Oregon, Order No. 02-634, (2002), pages 8-9)

Life of the Land's Position

We support decoupling. The devil is in the details.

In Investigation re Restructuring (DN 96-0493) We proposed a stock split whereby HECO would become two companies, one dealing with transmission & distribution ("TransCo"), the other with generation ("GenCo"). Thus the TransCo would sign agreements with all Independent Power Companies including GenCo but would be indifferent in supporting fossil fuels over renewables.

The issue of decoupling came up in the Distributed Generation docket (03-0371):
PUC-IR-26 Should the commission consider **decoupling** revenues from sales so that the utility is indifferent to installation of DG that has the effect of reducing sales?
Answer: Life of the Land wrote SB 2474 (2004) to accomplish this. (Life of the Land's

responses to Public Utilities Commission Information Requests re PUC Docket 03-0371. November 22, 2004 hawaii.gov/budget/puc/dockets/03-0371_lol_2004-11-22.pdf)

Life of the Land drafted: SB 2474 in 2004¹

SECTION 1. The legislature finds that economic diversification, import substitution, and export expansion are key to achieving sustainability. Further, import substitution may be achieved by increasing the use of renewable energy resources found in Hawaii such as wind, solar, ocean thermal, wave, and biomass resources. The purpose of this Act is to encourage import substitution by increasing the use of renewable energy sources found in Hawaii, thereby decreasing the need to import large amount of oil annually.

SECTION 3. Rate structure implementation; renewable portfolio standard incentives; report. (a) The public utilities commission shall:

- (1) Make findings and recommendations concerning the feasibility of the public utilities commission proposing and implementing a utility rate structure designed to reward and encourage consumers to use renewable energy sources found in Hawaii;
- (2) Gather, review, and analyze empirical data to determine the extent that this proposed utility rate structure would impact electric utility companies' profit margins, and to ensure that these profit margins do not decrease for a period of five years following the implementation of this rate structure;
- (3) Make findings and recommendations concerning the types of incentives that the public utilities commission could offer to electric utility companies in meeting the renewable portfolio standards established in section 269-92, Hawaii Revised Statutes; and
- (4) Report findings and recommendations, including proposed legislation, to the legislature no later than twenty days before the convening of the regular session of 2005.

The bill that was passed: Act 95-2004 (SB2474 SD3 HD2)²

SECTION 2. ... **§269- Renewable portfolio standards study.** The public utilities commission shall:

- (1) By December 31, 2006, develop and implement a utility ratemaking structure which may include but is not limited to performance-based ratemaking, to provide incentives that encourage Hawaii's electric utility companies to use cost-effective renewable energy resources found in Hawaii to meet the renewable portfolio standards ...

¹ www.capitol.hawaii.gov/session2004/bills/sb2474_.htm

² www.capitol.hawaii.gov/session2004/bills/sb2474_hd2_.htm

(3) Using funds from the public utilities special fund, contract with the Hawaii natural energy institute of the University of Hawaii to conduct independent studies to be reviewed by a panel of experts from entities such as the United States Department of Energy, National Renewable Energy Laboratory, Electric Power Research Institute, Hawaii electric utility companies, and other similar institutions with the required expertise. ...

(5) Report its findings and revisions to the renewable portfolio standards based on its own studies and those contracted under paragraph (3), to the legislature no later than twenty days before the convening of the regular session of 2009, and every five years thereafter."

Life of the Land has continued to analyze decoupling (2008):

"LOL-IR-60 (a) Could decoupling affect HECO's desire to get into biofuels? (b) Could decoupling lead to higher prices paid for local crop since HECO would be indifferent to sales and to ratepayer impacts?"³

Intervention

Hawaii Administrative Rules ("HAR") §6-61-55 Intervention⁴. (a) A person may make an application to intervene and become a party by filing a timely written motion in accordance with sections 6-61-15 to 6-61-24, section 6-61-41, and section 6-61-57, stating the facts and reasons for the proposed intervention and the position and interest of the applicant.

A person may make an application to intervene (HAR §6-61-55(a)). Life of the Land ("LOL") is a person as defined by HAR §6-61-2. LOL will be represented by LOL's Vice President for Consumer Affairs, Henry Curtis, in accordance with HAR §6-61-12.

1) Timeliness. Our motion to intervene is timely. The Public Utilities Commission ("Commission") opened the Feed-in Tariff docket ("Application") on October 24, 2008. Our Motion to Intervene was filed on November 3, 2008, which is within 20 days after the Application was filed.

³ PUC Docket 2007-0346 Life of the Land's Information Requests April 28, 2008

⁴ <http://www.hawaii.gov/budget/adminrules/har6-61.htm>

2) The nature of the applicant's statutory or other right to participate in the hearing. We recognize that the Commission has the discretion to determine whether we are permitted to intervene in this docket.

Life of the Land (LOL) is a 38-year old non-profit organization. Our actions have heavily influenced land use policy in the state, from our 1971 lawsuit with Maui Mayor Elmer F Cravalho which successfully required the Navy to conduct an Environmental Assessment on the bombing of Kahoolawe;⁵ to landmark Hawaii Supreme Court decisions on land use.^{6,7} Our influence on state history is significant: In 1995 the Honolulu Star-Bulletin ran a three special sections series reviewing four decades of Hawai'i's history: "The effect a person can have on a place is immeasurable. Here are the 10 people or organizations who, from 1965 to 1975, helped make Hawaii what it is today". The four organizations are: The state Land Use Commission; Bishop Estate; the Labor Unions; and Life of the Land.⁸

Life of the Land maintains an extensive web site on energy, produces the 'Olelo Community TV series Energy and Power in Hawaii, has testified on energy before the State Legislature.

A) Hawai'i State Constitution Article IX.

Section 1. For the benefit of present and future generations, the State and its political

⁵ Honolulu Advertiser: suit to seek end to Kahoolawe bombing (page 1, July 29, 1971)<http://www.lifeofthelandhawaii.org/Newsletters/HA%2007.29.71%20Kahoolawe.pdf> Maui News: Suit 'Reaffirms' Mayor's Kahoolawe Stand: Co-Complainant With Life of Land (July 31, 1971) <http://www.lifeofthelandhawaii.org/Newsletters/Maui%20News%2007.31.71%20Kahoolawe.pdf>

⁶ Life of the Land, 63 Haw. at 176-77, 623 P.2d at 441 (1981) (group members had standing to invoke judicial intervention of LUC's decision "even though they are neither owners nor adjoining owners of land reclassified by the Land Use Commission in [its] boundary review" Life of the Land, 61 Haw. at 8, 594 P.2d at 1082 (1979) (group members who lived in vicinity of reclassified properties and used the subject area for "diving, swimming, hiking, camping, sightseeing, horseback riding, exploring and hunting and for aesthetic, conservational, occupational, professional and academic pursuits," were specially, personally and adversely affected by LUC's decision for purposes of HRS ••91-14). www.state.hi.us/jud/21124.htm

⁷ Our "fundamental policy [is] that Hawaii's state courts should provide a forum for cases raising issues of broad public interest, and that the judicially imposed standing barriers should be lowered when the "needs of justice" would be best served by allowing a plaintiff to bring claims before the court." Id. at 614-15, 837 P.2d at 1268-69 (citing Life of the Land v. The Land Use Comm'n, 63 Haw. 166, 176, 623 P.2d 431, 441 (1981)). <http://www.state.hi.us/jud/21124.htm>

⁸ Honolulu Star-Bulletin March 14, 1995.

subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people.

Section 6. The State shall have the power to manage and control the marine, seabed and other resources located within the boundaries of the State, including the archipelagic waters of the State, and reserves to itself all such rights outside state boundaries not specifically limited by federal or international law.

Section 7. The State has an obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people.

Section 9. Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law.

B) State Environmental Policy. HRS 344

Section 1 Purpose. The purpose of this chapter is to establish a state policy which will encourage productive and enjoyable harmony between people and their environment, promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humanity, and enrich the understanding of the ecological systems and natural resources important to the people of Hawaii. [L 1974, c 247, pt of §1; gen ch 1993]

Section 2 Definitions. As used in this chapter unless the context otherwise requires: "Agency" means any department, office, board, or commission of the State or county government that is a part of the executive branch of that government.

"Environment" means the complex of physical and biological conditions that influence

human well-being, including land, air, water, minerals, flora, fauna, energy, noise, and places of historic or aesthetic significance.

Section 3 Environmental policy. It shall be the policy of the State, through its programs, authorities, and resources to:

(1) Conserve the natural resources, so that land, water, mineral, visual, air and other natural resources are protected by controlling pollution, by preserving or augmenting natural resources, and by safeguarding the State's unique natural environmental characteristics in a manner which will foster and promote the general welfare, create and maintain conditions under which humanity and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of the people of Hawaii.

(2) Enhance the quality of life by: ... (D) Establishing a commitment on the part of each person to protect and enhance Hawaii's environment and reduce the drain on nonrenewable resources.

Section 4 Guidelines. In pursuance of the state policy to conserve the natural resources and enhance the quality of life, all agencies, in the development of programs, shall, insofar as practicable, consider the following guidelines:

(2) Land, water, mineral, visual, air, and other natural resources. (A) Encourage management practices which conserve and fully utilize all natural resources ...

(3) Flora and fauna. (A) Protect endangered species of indigenous plants and animals and introduce new plants or animals only upon assurance of negligible ecological hazard ...

(5) Economic development. (A) Encourage industries in Hawaii which would be in harmony with our environment ...

The Hawaii Supreme Court: ⁹

"We therefore hold that [the constitution] adopt[s] the public trust doctrine as a fundamental principle of constitutional law in Hawaii. ... [t]he public trust doctrine applies to all water resources without exception or distinction [including surface and underground water]. ... Under the public trust and the Code, permit applicants have the burden of justifying their proposed uses in light of protected public rights in the resource. [t]he public trust effectively creates this burden through its inherent presumption in favor of public use, access, and enjoyment."

"The 'precautionary principle' appears in diverse forms throughout the field of environmental law. ... As with any general principle, its meaning must vary according to the situation and can only develop over time. In this case, we believe the Commission describes the principle in its quintessential form: at minimum, the absence of firm scientific proof should not tie the Commission's hands in adopting reasonable measures designed to further the public interest. ...

So defined, **the precautionary principle simply restates the Commission's duties under the constitution and Code. Indeed, the lack of full scientific certainty does not extinguish the presumption in favor of public trust purposes or vitiate the Commission's affirmative duty to protect such purposes wherever feasible. ...**

In furtherance of its trust obligations, the Commission may make reasonable precautionary presumptions or allowances in the public interest. The Commission may still act when public benefits and risks are not capable of exact quantification. At all times, however, **the Commission should not hide behind scientific uncertainty, but should confront it as systematically and judiciously as possible ...** We do not expect this to be an easy task. Yet it is nothing novel to the administrative function or

⁹ IN THE SUPREME COURT OF THE STATE OF HAWAII ---oOo--- In the Matter of the Water Use Permit Applications, Petitions for Interim Instream Flow Standard Amendments, and Petitions for Water Reservations for the Waihole Ditch Combined Contested Case Hearing NO. 21309 APPEAL FROM THE COMMISSION ON WATER RESOURCE MANAGEMENT (CASE NO. CCH-OA95-1) AUGUST 22, 2000 www.state.hi.us/jud/21309op.htm

the legal process in general.

The LOL's Petition and Charter of Incorporation (December 16, 1970) states: "The organization is organized ... [to] intervene in legal matters as may be appropriate to ... conserve resources, preserve or restore natural beauty or correct environmental abuse." The LOL Board of Directors adopted Energy Policy Goals and Objectives (July 13, 1981). "Goal: To meet the State's energy needs through conservation and low-cost, non-polluting resources." LOL's Board of Directors is authorized to act on behalf of its members. On Friday, September 22, 2000, the LOL Board of Directors approved continuing to intervene in energy dockets as a means of promoting sustainable policies. Henry Curtis, Vice-President for Consumer Affairs, is authorized by the LOL Board of Directors to represent LOL before the PUC in accordance with HRS Section 6-61-12.

We have been a party in several regulatory actions including: Investigation of Restructuring (96-0493); MECO IRP-2 (99-0004); HECO IRP-3 (03-0253); HELCO IRP-3 (04-0046); HECO IRP-4 (2007-0084); HECO DSM (00-0209); Statewide DSM (05-0069); Distributed Generation (03-0371); HECO's Proposed 2009 Power Plant (05-0145); HECO's East Oahu Transmission Project (03-0417); Rate Structures (2793); Renewable Portfolio Standard penalties (2007-0008).

3) The nature and extent of the applicant's property, financial, and other interest in the pending matter; LOL is a non-profit Hawaii-based organization. Our members live, work and recreate in Hawaii. Life of the Land is concerned with many issues including those related to the environment, climate, justice, equity, and life cycle impacts. Life of the Land is a member of both the Wheeling Docket and the IRP docket, each of which will be affected by decisions made in this docket.

Life of the Land's position in Commission dockets is not limited to what many believe is the realm of traditional environmentalism: the birds and the bees, land use and toxic pollution. Rather, Life of the Land has a holistic approach which includes: (1) Transparency/Sunshine; (2) Life Cycle Social Impacts; (3) Life Cycle Environmental Impacts; and (4) Life Cycle Financial Impacts

(1) Transparency/Sunshine: The process must be open and understandable.

Documents must be easily accessible, and downloadable from the web. Public input must be accepted. This includes meaningful public hearings and permitted interventions in regulatory proceedings. Environmental impact statements should be written when there are significant impacts, and they should include cumulative impacts and alternatives. Closed-door secret meetings where policy is decided is the wrong way to bring about change. The ends do not justify the means.

(2) Life Cycle Social Impacts: Solutions must be People Friendly. There must be respect for individuals, groups and communities, workers, children, women and minorities. Labor should work in a safe environment and have the right to organize. The use of sweat shops, slave labor and union busting techniques is not acceptable. Community impacts are important in Hawai'i and also from where the feedstock is imported from.

(3) Life Cycle Environmental Impacts: Projects must promote biodiversity, and minimize climate impacts. Energy Injustice must be accounted for: the building of projects with significant environmental impacts should not be dumped in poor minority communities. Environmental impacts are important in Hawai'i, and also from where the feedstock is imported from and where the waste products are disposed. Projects must take into account the Public Trust Doctrine and the Precautionary Principle.

Public Trust Doctrine: "Most importantly, the people of this state have elevated the public trust doctrine to the level of a constitutional mandate." (Hawaii Supreme Court: In re Water Use Permit Applications 94 Haw. 97 (2000) p. 131)

Precautionary Principle: "[T]he precautionary principle simply restates the Commission's duties under the constitution and Code. Indeed, the lack of full scientific certainty does not extinguish the presumption in favor of public trust purposes or vitiate the Commission's affirmative duty to protect such purposes wherever feasible. ... In furtherance of its trust obligations, the Commission may make

reasonable precautionary presumptions or allowances in the public interest. The Commission may still act when public benefits and risks are not capable of exact quantification. At all times, however, the Commission should not hide behind scientific uncertainty, but should confront it as systematically and judiciously as possible ... We do not expect this to be an easy task. Yet it is nothing novel to the administrative function or the legal process in general. (Hawaii Supreme Court: In re Water Use Permit Applications 94 Haw. 97 (2000) p.)

(4) Life Cycle Financial Impacts: People are ratepayers and taxpayers. Least cost is a regulatory approach that seeks to minimize ratepayer impacts without analyzing taxpayer impacts. People have two pockets. Minimizing what is taken out of one pocket while ignoring what is taken out of the other pocket makes no sense. By contrast, the Consumer Advocate analyzes ratepayer but not taxpayer impacts. (Q. "What would the taxpayer (as opposed to ratepayer) impacts be from using 100% biofuels?" A. "The Consumer Advocate does not possess the knowledge or expertise to this question." (DN 05-0145, Life of the Land Question, Consumer Advocate Response re LOL-CADT-IR-41) Q. "For each dollar that HECO would spend buying ethanol, how many dollars of taxpayer money is being used to subsidize the price of ethanol? This is a key question, as the Consumer Advocate, can you support unknown taxpayer expenditures to subsidize ratepayer rates?" A. "The Consumer Advocate does not possess the knowledge or expertise to this question." (DN 05-0145, Life of the Land Question, Consumer Advocate Response re LOL-CADT-IR-42))

Balance of Payments: Replacing imported fuel with indigenous fuel has an enormous positive impact on local jobs and on economic prosperity. Each dollar that enters Hawaii causes \$3-4 of local economic activity. Each dollar in Hawaii that leaves the state causes a decrease of \$3-4 in local economic activity.

4) The effect of the pending order as to the applicant's interest: The continued use of fossil fuels, the rate of the shift to renewable energy, and the path taken significantly affects LOL and our members. Global Greenhouse gas emissions must be reduced. This docket may greatly impact the use of renewable energy but the devil is in the details. There are few public revelations about how the details will be

worked out. In California, KEMA analyzed six different paths. Each path has different impacts on people, the environment, the degree to which it would move us towards sustainable approaches, and the displacement of other solutions. It is imperative that we adopt a reasonable but effective approach to solving our energy crisis.

5) **Other Means Available Wherein Applicant May Protect His Interest.** There are no other means available to protect our interests.

6) **Other Parties Do Not Represent LOL's Interests.** The existing parties will be the fossil fuel based utilities and the Consumer Advocate which protects consumers interests. LOL represents environmental, social and holistic interests. For example, consumer and environmental issues are distinct, although they overlap. A minimal divergence is sufficient for separate representation. In most dockets that are or have recently been before the Commission, LOL's position has been significantly different from the Consumer Advocate. For example, we believe that Climate Change is a serious and immediate global crisis, while the Consumer Advocate has stated on the record that if global warming is real, any mitigation needed is decades away from needing regulatory action. We also have significant differences with regard to the use of life cycle analysis, analyzing both ratepayer and taxpayer impacts, balance of payment analysis, social impacts, environmental justice, the public trust doctrine, and the precautionary principle. A quick review of Dockets 05-0145 and 2007-0346 reveal deep rifts between the LOL and Consumer Advocate positions.

"Generally, community intervenors have been forced to rely on free legal and consulting services. Yet, they have infused us so-called 'experts' with new ideas. They have reminded us of the critical impact of essential utility services on life's basic necessities. With a modest funding source, these and other groups should be able to continue and enhance their role. Another situation where ... there are consumer groups with conflicting interests. At that point, our office is forced to select and advocate one position." Senate Bill No. 1918 (1997). Presentation of the Department of Commerce and Consumer Affairs to the Senate Committee on Commerce, Consumer Protection and Information Technology. Regular Session of 1997. February 10, 1997.

7) LOL's Participation will Assist the Development of a Sound Evidentiary

Record. We offer a unique perspective. We intend to present a proactive case, supported by expert witnesses and exhibits, which will provide to the Commission alternate scenarios. Our participation will enable the Commission to view and consider all of the pertinent available information needed to make a sound decision.

Life of the Land's Executive Director has a particular focus on energy policy, having represented the organization in a six year regulatory proceeding before the Board of Land and Natural Resources and sixteen (16) regulatory proceedings before the Hawai'i Public Utilities Commission. He has been described as an "energy wonk" (Honolulu Weekly, November 29, 2000) who "closely follows and participates in Hawai'i energy issues" (Environment Hawaii, September 2004).

Life of the Land's Executive Director produced Community Television shows re: (1) HPU's presentation of Stanford University Climatologist and Climate Nobel laureate Dr Stephen Schneider at St. Andrew's Priory; (2) the University of Hawai'i Richardson School of Law's Climate Teach-In; and (3) the Kickoff Meeting of the Hawai'i Power & Light: An interfaith religious response to global warming

Life of the Land's Executive Director served as a Peer Reviewer on a University of Hawai'i's *Hawaii Natural Energy* Institute report on Renewable Portfolio Standards report submitted or about to be submitted to the Hawai'i Public Utilities Commission.

The University of Hawai'i Richardson School of Law's Environmental Law Program participated in the 2007 Environmental Moot Court competition. The fictional lawsuit dealt with the Province of Inuksuk (in real life the northern 1/3 of Quebec) v. U.S. Coal Companies re Sea Level Rise and Coastal Destruction of their villages due to Climate Change. LOL's Executive Director Henry Curtis and Assistant Executive Director Kat Brady served as US Appeal Court Judges in moot court practice sessions.

Life of the Land has sponsored dozens of witnesses in Hawai'i Public Utilities Commission regulatory proceedings including lawyers and Ph.D.s with specialized expertise.

As this instant docket was just filed, Life of the Land has not determined which witnesses to sponsor nor what documents to introduce. This is a reasonable approach. In fact, no party has publicly identified any witnesses they will sponsor in this docket.

8) LOL's Participation Will Neither Unduly Broaden The Issues Nor Delay This Proceeding. Our comments, testimonies, expert witnesses and exhibits will be provided so as to strengthen the defensibility of the PUC decision. We do not seek to muddy the waters, but rather to bring clarity to the issues at hand. We have always accommodated the numerous time extensions requested by other Parties in the dockets that we are or have been in, but we have not delayed any docket based on a request by us to delay the proceedings. Allowing intervention by LOL, the filing of our comments and questions, and granting the other relief sought in this petition, the PUC will merely place LOL in the same substantive and procedural position as the other parties to these proceedings.

While we have gone along with time extensions proposed by the Consumer Advocate and HECO, we have never requested one on our behalf, nor have we ever approached the Consumer Advocate nor HECO about extending any docket.

We have never gone beyond the issues in any docket. In the biofuel supply contract (2007-0346) HECO accused us of doing this, but they misread Commission Order 24144 which clearly stated: "The commission finds that the issues proposed by LOL are subsumed within the broad issues listed in HECO and the Consumer Advocate's proposed issues." (page 6) Subsumed means contained within, as opposed to excluded from.

9) LOL's Interests Differ From Those Of Those Of The General Public. The Consumer Advocate is bound by the law to represent the interests of the general public, that is, the consumers of utility services. Traditionally, they wait until all the facts are in before jumping to a conclusion. In this case, the Consumer Advocate has

agreed to a unified position with the utility. There is nothing in the existing record that indicates that any of the issues that are of concern to Life of the Land -- including those related to the environment, climate, justice, equity, and life cycle impacts -- have been analyzed or will be represented by any other party.

10) Whether the applicant's position is in support of or in opposition to the relief sought. Life of the Land supports policies which will decrease our use of fossil fuel and decrease our greenhouse gas emission footprint. This docket is complex. We agree in part with some of it and disagree in part with other parts of it, however, in the end, it is the details that will make the final policy wise or foolish.

11) Parties and Participants. Since all existing parties represent only one viewpoint, it is essential for other viewpoints to be heard. Life of the Land prays that the Commission has a liberal approach to admitting parties to transformational dockets associated with the Hawaii Clean Energy Initiative. While Hawaii rate cases traditionally have fewer intervenors, investigations traditionally have many parties. PUC regulatory proceedings re decoupling across the country have been complex dockets with multiple intervenors admitted as parties. It is in the interest of the HECO Companies and the State to develop a sound and reasonable approach that is in the public interest.

Certificate of Service

I hereby certify that I have this date served a copy by hand delivery of the foregoing Motion To Intervene by Life of the Land, in PUC Docket Number 2008-0274, upon the following parties. I have hand delivered the original and 8 copies to the PUC, and two copies to the Consumer Advocate and mailed one copy to each other party listed below.

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Dated November 3, 2008



Henry Q Curtis
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